

June 2005

Update: Crime Victim Rights Manual (Revised Edition)

CHAPTER 7

Victim Notification

7.14 Notification of Post-Conviction DNA Testing

On page 158, replace the last sentence of the first paragraph with the following text:

All petitions must be filed no later than January 1, 2009.*

*2005 PA 4,
effective April
1, 2005.

CHAPTER 8

The Crime Victim at Trial

8.14 Former Testimony of Unavailable Witness

C. Defendant's Right to Confront the Witnesses Against Him or Her

Insert the following text at the end of the second-to-last paragraph on page 264:

See *United States v Garcia-Meza*, ___ F3d ___, ___ (CA 6, 2005), a case involving the rule that admission of an unavailable witness' statement does not violate the Confrontation Clause if the defendant caused the witness to be unavailable.

The *Garcia-Meza* Court also rejected the defendant's assertion that forfeiture of his right to confrontation only applies when a criminal defendant kills or otherwise prevents a witness from testifying with the specific intent to prevent him or her from testifying. Although FRE 804(b)(6) (and MRE 804(b)(6)) may contain this requirement, it is not a requirement of the Confrontation Clause. *Garcia-Meza, supra* at ___.

A witness' out-of-court photo identification of the defendants during police questioning was a testimonial statement improperly admitted through the testimony of the investigating officer where the witness did not testify at trial and the defendants did not have a previous opportunity to cross-examine the absent witness. *United States v Pugh*, ___ F3d ___, ___ (CA 6, 2005).

CHAPTER 12

The Relationship Between Criminal or Juvenile Proceedings & Civil Actions Filed by Crime Victims

12.3 Statutes of Limitations for Tort Actions

Insert the following text at the bottom of page 389:

The discovery rule is applied “to avoid unjust results which could occur when a reasonable and diligent plaintiff would be denied the opportunity to bring a claim due [] to . . . the inability of the plaintiff to learn of or identify the causal connection between the injury and the breach of a duty owed by a defendant.” *Trentadue v Buckler Automatic Lawn Sprinkler Co*, ____ Mich App ____ (2005).

In *Trentadue*, the plaintiff brought claims against the defendants that, without application of the discovery rule, would have been precluded by the relevant statutes of limitation. The defendants argued that the discovery rule could not be used to extend a claim’s date of accrual until the perpetrator’s identity is established or a plaintiff has determined all the causes of action possible. The Court of Appeals agreed with the plaintiff that the discovery rule applied to mark the date of accrual as the date on which the reasonable and diligent plaintiff discovered the causal relationship between the plaintiff’s injury (the victim’s death) and the defendants’ breach of a duty owed to the victim. *Id.* at ____.

The Court distinguished the case from cases of unknown identity to which the discovery rule does not apply. In *Trentadue*, the plaintiff was aware of the injury and the cause (the plaintiff’s decedent was murdered); what the plaintiff did not know, and could not have known until the killer’s culpability was established, was that other parties, based on their relationship to the killer, harmed the victim by breaching duties owed to the victim. *Id.* at ____.